Central Law Journal.

ST. LOUIS, MO., AUGUST 28, 1914.

EXCESS OF VERDICT A MATTER TO BE DEALT WITH BY TRIAL COURT.

The Federal Supreme Court has held, in an action brought in a state court under the Federal Employers' Liability Act, that where the excess in a verdict does not appear as matter of law it is left as dealt with by the trial court. Southern Ry. Co. v. Bennett, 238 U. S. 40, 34 Sup. Ct. 566.

In this case there was a verdict for $25,000, on which the trial court ordered judgment upon plaintiff's remitting $5,000. This ruling was affirmed by the State Supreme Court. S. C. 79 S. E. 710.

In the Federal Supreme Court it was claimed the judgment as entered was manifestly excessive, the argument being that deceased was only making $900 a year with a possibility of promotion from fireman to engineer and he could not have given more than $700 per year to his family. His expectation of life by the tables of mortality was about thirty years. Therefore it was said that the legal rate of interest on $10,000 was all that a verdict legally could be rendered for, while the judgment was for twice that sum. The court ruled that the excess not appearing as "matter of law" the trial court's judgment in the matter was conclusive.

A federal district court considers the above ruling in connection with the principle that the amount of the verdict being an estimate from the testimony of the money value of the loss sustained is not within the control of the trial court, if the court's opinion happens to differ from the result reached by the jury, which principle this court declares to be undoubtedly sound. Yukonis v. Delaware L. & W. R. Co., 123 Fed. 535.

The district court deduced the rule that: "A determination that a new trial would have to be granted, unless the verdict were entered at the greatest amount which the testimony would support, is but another way of exercising the discretion which a trial court undoubtedly has. To merely compel the plaintiff to grant something in the defendant's favor, in the way of stipulation, so as to avoid a new trial, is but a means of carrying out the actual determination of the court that a divisible or separable part of the verdict is supported by the evidence."

Had the court have added, that the stipulation submitted for plaintiff's acceptance only should go to the reach of the non-support in evidence and no more than a partial new trial be forced upon plaintiff for non-acceptance, there would be nothing to except to in the statement. To make it include the opening up of the question of liability along with measure of damages would seem to penalize a refusal.

But this observation is only incidental—the opportunity to throw in a word about our hobby of partial new trials being too tempting. What we purpose to allude to is what the U. S. Supreme Court seems to declare to be the exclusive right of the trial court to take care of the matter of reduction of verdicts for excessiveness.

This exclusive right seems to exist when the trial court is acting in its discretion, that discretion, being limited, of course, only by the bounds of abuse.

But how shall abuse be shown? Only, it seems to us, by the trial court reducing a verdict to a point above or below the greatest amount which the testimony would support. This consideration has rarely been seen to be the guiding principle in appellate courts ordering remittiturs in verdicts. They have reduced verdicts without ever alluding to the fact, whether or not there has been an abuse of discretion by the trial court, either in refusing to reduce or in not reducing enough or in reducing too much. They have rather acted upon some legislative direction that an appellate court may

affirm, conditionally affirm or reduce and affirm.

These directions, however, should be construed in the light of respecting the trial court's discretion, and a strictly correct way of getting that reviewed is to assign as of error, that it has been abused. Indeed, if the discretion exists there would seem to be no way to get a ruling of this kind reviewed unless error be predicated upon alleged abuse of discretion. Ruling of reversal should, therefore, distinctly say there was abuse of discretion by the trial court. Where there is affirmance the ruling should be that discretion was not abused.

This kind of practice would cut a wide swath in verdicts for exemplary damages. They would generally have to be allowed to stand as the trial court determines the matter, because the alleged excess could never appear "as matter of law."

And so would have to stand all verdicts for recoveries for compensatory damages, where they are given for insult, degradation, humiliation or mental suffering. Certainly, if it might be said that the cases cited above, in which there was something of a basis on earnings and expectancy of life, could not be touched, where the trial court had decided, there scarcely may be supposed any matter of law for telling how much a verdict ought to be for punitive damages, or where the feelings are involved.

It is time, we think, that appellate courts should stop setting aside verdicts left by trial courts in the exercise of their discretion to stand merely because appellate judges would not exercise discretion as trial courts have exercised it.

It also is time that appellate courts begin to rule cases upon strictly legal grounds, and not upon any personal predisposition of judges on the bench. To fix the amount of recovery is for some member of the court to yield something of view to another member, and thus get at a compromise amount. But a court established to lay down the law ought merely to make square pronouncements between opposing contentions. When they tread such a line, they may hope to keep the course of precedent clear, and not until then.

We may say, in conclusion, that the case decided by the Federal Supreme Court was laying down the rule in a class of cases under federal law, but seemingly it was not trying to interfere with any rule of practice in state courts. It was merely stating what appears to be a rule that should obtain as a logical principle.

NOTES OF IMPORTANT DECISIONS

PROCESS—SERVICE ON FOREIGN CORPORATIONS IN A STATE WHERE IT DOES INTERSTATE BUSINESS ONLY.—In 79 Cent. L. J. 109, we discuss the right of a foreign corporation, a common carrier, to escape taxation by refusing to do local business in the state which imposes the tax on the local business. Here we have the interesting question of an ordinary business corporation doing only interstate business being served with process in a state where it has agents. International Harvester Co. v. Kentucky, 34 Sup. Ct. 944.

In this case agents of a foreign corporation solicited business of an interstate character in Kentucky, which agents came under the description of those upon whom process against a foreign corporation could be served were it doing a local business in the state.

Mr. Justice Day in speaking of the validity of the service said: "Upon this question the case is a close one, but upon the whole we agree with the Court of Appeals that the Harvester Company was carrying on business in Kentucky. We place no stress upon the fact that the company had previously been engaged in doing business in Kentucky and had withdrawn from the state for reasons of its own. In order to hold it responsible under the process of the state court, it must appear that it was carrying on business within the state at the time of the attempted service. As we have said, we think it was. Here was a continuous course of business in the solicitation of orders, which were sent to another state, and in response to which the machines of the Harvester Company were delivered in the state of Kentucky. This was a course of busi-

ness, not a single transaction. * * * This course of conduct of authorized agents within the state in our judgment constituted a doing of business there in such wise that the Harvester Company might be fairly said to have been there doing business and amenable to the process of the courts."

In this case the company entered no defense to a charge under the anti-trust laws of the state, which, as seen in 79 Cent. L. J., page 127, was held unconstitutional, but merely moved to quash the return of service, which motion was overruled and sentence imposed.

This ruling was claimed to place a burden on interstate commerce. The court said: "The contention comes to this: So long as a foreign corporation engages in interstate commerce only, it is immune from service of process under the laws in which it is carrying on business. This is indeed, as was said by the court of appeals, a novel proposition, and we are unable to find a decision to support it, nor has one been called to our attention."

The court then goes on to say it is a long way from holding that a state can place no burden on interstate commerce to say a corporation only carrying on such business is not amenable to process of the state in which it is carrying on interstate business.

Another case handed down at the same time referred to this case and reversed the holding of Kentucky court on the ground of the anti-trust laws of Kentucky being unconstitutional. Same v. same, id. 947.

It does seem that, if a corporation has the right to go into a state and do interstate business without any leave or license by the state, then it ought not to be deemed to be there except on its own terms, but, then, this principle pushed to its last analysis would exempt a domestic corporation doing only interstate business from service of process under state law. The consequence would be that only under federal statute could any process be made on a company doing only an interstate business.

This would, therefore, involve the singular conclusion, that a corporation under state charter could only be served, because of the kind of business it carried on, under federal law.

FOREIGN CORPORATION—SURETY COMPANY GOING ON BONDS OF FEDERAL OFFICERS AS CARRYING ON BUSINESS IN A STATE.—In Commonwealth v. Fidelity & D. Co., 90 Atl. 437, as decided by Supreme Court of Pennsylvania, shows an acceptance of a surety company, as the sole surety, on bonds of federal officers, under authority of the Attorney General given by virtue of an act of Congress. The state sued for tax on premiums imposed by state statute on foreign corporations doing business within the state.

It was claimed that such tax interferes with the functions of the federal government. But the court said, in effect, that the statute had no such effect, as defendant being free or not to enter into such contracts could not be said to have done so at the request of the government, it having no interest in this defendant rather than in another becoming such surety.

The companies "were acting for themselves and for their principals. They were selected by their principals and accepted by the government without cost or charge to it. . . . It did not undertake to perform official's duties. It did not exercise any governmental function. It was not in the employ of the federal government. It was in no sense an instrumentality of government."

The contention in this case proceeds on the theory that there is a tax upon the government, because somehow the cost of a bond comes out of the government, but, if there is such effect at all, it is altogether so indirect, that, if the claim were allowed, hardly a state regulation of any kind might be enforced. Governmental revenue is often seriously affected by state regulation, but hardly may it be claimed that, therefore, the regulation is void. Congress by specific enactment might control a case of this kind, but it is not easy to see that the statute in this case meant any such thing.

GARNISHMENT—JUDGMENT FOR DEBT AS OUSTING JURISDICTION.—The case of Loewenstein v. Levy, 212 Fed. 383, a case removed to the federal court, presents an interesting question as regards seizure in another state of a debt due to the principal defendant.

An attachment suit was brought in Tennessee against Folz, a non-resident, and garnishment served on Loewenstein, a resident, the purpose being to catch indebtedness. Previously Folz had sued Loewenstein in New York and the action afterwards resulted in judgment against him. By stipulation in the Tennessee case answer of Loewenstein was postponed until conclusion of the litigation in New York. Then he answered, setting up the New York

judgment as taking the indebtedness away from Tennessee and transferring it to New York.

The court said: "The thing here involved the debt from Loewenstein to Folz could be seized or appropriated at Memphis only by service of process like a summons on Loewenstein; but the same thing had already been impounded in the same way by the Supreme Court of New York." The only way we understand this observation is that the judgment against the debtor whose debt was sought in the Tennessee suit was "impounded" by the fact of a New York judgment against him. This is to say that while a debt may have a situs wherever the person owing it may be garnished, yet the rule does not apply if the person to whom he owes it has obtained judgment therefor upon a cause of action of which there is jurisdiction,

The court does not specifically announce our deduction as a principle, but it does hold the debt was impounded in New York, but how impounded unless by judgment having been rendered, it is difficult to see. It was said the New York court had acquired "full jurisdiction over the cause of action and the debtor's person," and the question was whether "the same indebtedness can serve as the basis of jurisdiction for the courts of another state in a suit by his creditor against the plaintiff in the first suit as principal defendant and against the defendant in the first suit as garnishee defendant."

The suit was stated to be for breach of contract, but the judgment rendered seemed to be merely general, and why the fact of its rendition in New York would prevent the debt being garnished at the home of the debtor is by no means apparent. The court seems to think its payment to the creditor of the judgment plaintiff, where there is jurisdiction over the debt, could not be pleaded. But why should it not be allowed as payment? In all fairness he gets the benefit of the payment and not to allow it to count as payment seems to give the New York judgment extraterritorial operation by way of lien, which is a greater effect than is given to a domestic judgment, which is subject to garnishment.

EMPLOYERS' LIABILITY ACT—SUPERSEDING OF STATE STATUTES WHERE APPLICABLE.—In Jones v. Charleston & W. C. Ry. Co., 82 S. E. 415, decided by South Carolina Supreme Court, it was held that the fact that a state statute gives to others than those named in the Federal Employers' Liability Act the right as employees to recover for a death caused by negligence, gives no right of action to such others when the employee is killed while he and his employer is engaged in interstate commerce.

The court said: "Appellant contends that as the act of Congress gives a right of action in favor of dependent relatives, while the state statute gives the right in favor of relatives, whether dependent or not, the two statutes do not cover precisely the same field, and therefore the state statute was not superseded insofar as it gives a right of action in favor of relatives who are not dependent. This is a misconception of the scope of the legislation of Congress. It deals with the liability of interstate carriers by railroads for injuries to their employes while both are engaged in interstate commerce. It is paramount and exclusive and necessarily supersedes state law upon that subject. Therefore the liability of such carriers for such injuries must be tested solely by the act of Congress, which cannot be pieced out by the state law on the same subject." The case then refers to several late cases, which go no further than to declare that for an injury happening to an employe or for his death while engaged in interstate commerce, the parties named as entitled to sue thereunder must rely upon the Federal Employers' Liability Act.

As we take it, the question here seems different. Without the act an action would be under state law and the act *prima facie* cuts out only those who are described by the act from suing under state law. It may be, however, that if the act may be thought to intend to cover the entire field of liability, it would cut out everybody else as well. When we consider, however, that the act is but legislation in regulation of interstate carriers and not as giving, for the sake of employes, any right of action, it plausibly might be urged, that it ought the more plainly to appear, that other liability is excluded.

Lately this Journal (79 Cent. L. J., 37) spoke of the principle decided by Supreme Court in one of the cases cited, of a right of action being claimed in a suit brought under the act and on the proof showing the accident did not occur in interstate commerce allowing recovery under state law. It must have been that the plaintiff was equally recognized under federal and state law. This last case suggests that state law should be made to conform to federal law as to parties having the right to sue.

WHAT LAW GOVERNS THE RIGHT OF RECOVERY UNDER THE WORKMEN'S COMPENSATION ACTS.

General.—It it a general rule, and one that needs the citation of no authority to support it, that the law of the state where an injury occurs controls the right of the injured person to recover therefor. Thus, where an action for damages was brought in Indiana for an injury received by the plaintiff on defendant's railroad in Ohio, it was held that the law of the latter state governed the right of recovery.[1]

In the construction of a tunnel under the St. Clair river an employe was sent from the American side, where he had been working, to the Canadian side, where he was injured while engaged in the duties of his employment. It was held that the right of the injured employe to recover was governed by the laws of Canada.[2]

The right of a seaman on a German vessel, carrying the German flag, to recover for an injury received while the vessel was on the high seas, was controlled by the German Workmen's Compensation statute.[3]

An employe was injured by being struck by a timber which fell from a car claimed to have been negligently loaded. The car was loaded in New Mexico and the injury occurred in Texas. Held, that the law of Texas was controlling.[4]

Consequently, it has been declared that if a workman has no cause of action in the state where the injury occurred, he has none elsewhere.[5]

Law of State Where Contract of Employment Was Made.—In a few jurisdictions it is held that the law of the state where the contract of employment is entered into controls the right of an employe to recover for personal injuries incurred in such employment.[6]

It has been held in New York that where the performance of a contract of employment made in Germany for service on a vessel was to commence at Hamburg and was not completed until the return of the vessel to that port, the law of the place where the contract was made controlled the right of any workman so employed to recover for injuries received in such employment.[7]

In an action brought in New York to recover compensation under the New Jersey Workmen's Compensation statute for the death of a workman, it was held that the provision of the New Jersey statute that every contract of hiring made subsequent to the taking effect of the statute shall be presumed to have been made with reference thereto, applies only when the contract of hiring was made in New Jersey.[8]

Where the Statute Prescribes the Remedy.—Forms of remedies and modes of procedure are generally held to be regulated exclusively by the laws of the state where the action is instituted; that is, by the *lex fori.*

Where a statute creates a new right and prescribes the remedy therefor, such remedy is exclusive. "It is obvious that if a special and peculiar remedy is given by the law of the state creating the liability, no other state will in general possess the machinery adequate to enforce it, and its

(1) Baltimore & O. S. W. R. Co. v. Jones, 158 Ind. 87, 62 N. E. 994.

(2) Turner v. St. Clair Tunnel Co., 111 Mich. 578, 70 N. W. 146, 36 L. R. A. 134, 66 Am. St. Rep. 397, 3 Det. Leg. N. 788.

(3) Beyer v Hamburg-American S. S. Co., 171 Fed. 582.

(4) El Paso & N. W. R. Co. v. McComas, Tex. Civ. App. 1903, 72 S. W. 629; 36 Tex. Civ. App. 170, 81 S. W. 760.

(5) Root v. Kansas City Southern R. Co., 195 Mo. 348, 271, 92 S. W. 621, 6. L. R. A. (N. S.) 212.

(6) New Orleans J. & G. N. R. Co. v. Wallace, 50 Miss. 244; Dyke v. Erie R. Co., 45 N. Y. 113, 6 Am. Rep. 43; Pensabene v. Auditore Co., 78 N. Y. Misc. 538, 138 N. Y. Supp. 947; Alexander v. Pennsylvania Co., 48 Ohio St. 623, 30 N. E. 69; see Williams v. Southern R. Co., 128 N. C. 286, 38 S. E. 893.

(7) Schweitzer v. Hamburg-Amerikanische Actien Gesellschaft, 149 N. Y. App. Div. 900, 134 N. Y. Supp. 812.

(8) Pensabene v. Auditore Co., 140 N. Y. Supp. 266, reversing 78 N. Y. Misc. 538, 138 N. Y. Supp. 947.

courts would have no authority to enforce it by other means. If the statute creating the liability leaves the remedy to be determined by the application of general principles of jurisprudence, then its enforcement in a foreign state must depend upon whether such state, through its courts, possesses adequate machinery to enforce it, without danger of injustice. Hence a liability arising upon the same statute may be enforced in one state when it will not be enforced in another. Even in the same state the machinery may be adequate for the enforcement of certain rights in connection with the liability, while not adequate for other purposes. In that event, since the existence of the liability is recognized everywhere, such redress as the courts of the forum may properly grant will be afforded."[9]

"Ordinarily, statutes of the several states regulating remedies by means of judicial proceedings are to be understood as intended to apply only to proceedings in the courts of the particular state, unless it clearly appears that they were intended to have a wider scope."[10]

If a right exists at common law, however, and a statute creates a new remedy, such remedy is cumulative, and either that or the one existing at common law may be pursued.[11] And where a new remedy is created for a pre-existing right, and other remedies are not thereby expressly or impliedly repealed, the remedy is cumulative, and an injured person may, at his election, resort to this or any other existing remedy.[12]

Application of the Principles to Workmen's Compensation Cases.—Ordinarily the rights of an injured workman who is subject to the provisions of the Workmen's Compensation statue of the state in which he is injured will be enforced by the courts of another state, provided the machinery of the court in which the action is brought is adequate and it is possible to administer the remedy.

It was urged in New York in cases brought in that state to recover under the provisions of the Compensation act of New Jersey, that to apply such law would be contrary to the public policy of the state of New York, especially in view of the decision in the case of Ives v. South Buffalo R. Co.,[13] which held the Workmen's Compensation statute of New York unconstitutional. But the courts held that the Ives case referred to a law which was compulsory and had no application to the New Jersey law, which is elective, and that the Ives case does not conflict with the provisions of the New Jersey act.[14] "The Court of Appeals," said the court in the case last cited, "certainly nowhere said, nor anywhere decided, that the general purpose and the theory of the workmen's compensation movement, and the statutory recognition and advancement thereof, were against the public policy of the state of New York."

Where Workman Waives Right of Common Law Action in State Where Injury Occurs.—Where it is expressly provided that by accepting the terms of the Workmen's Compensation statute a workman thereby waives his right to bring a common law action for an injury incurred in his employment, he cannot, after accepting such statute maintain a common law action in another state for an injury occurring in the state where the statute exists. In such circumstances the workman would have no common law right of action in the state where the injury occurred, and as his right of action depends on the law of the state where the injury occurs, he would have no such right in another state.[15]

(9) Minor, Conflict of Laws, Sec. 10, p. 27.
(10) Majors v. Cowell, 51 Cal. 478.
(11) People v. Craycroft, 2 Cal. 243.
(12) 1 Cyc. 709, and cases there cited.

(13) 201 N. Y. 271, 1 N. C. C. A. 517, 94 N. E. 431, 34 L. R. A. (N. S) 162, 23 Am & Eng. Anno. Cas. 156.

(14) Albanese v. Stewart, 78 N. Y. Misc. 581, 138 N. Y. Supp. 942; Pensabene v. Auditore Co., 78 N. Y. Misc. 538, 138 N. Y. Supp. 947.

(15) Pendar v H. & B. American Mach. Co., R. I., June 11, 1913, 87 Atl. 1.

Extra Territorial Application of the Workmen's Compensation Acts.—It is a well established rule that, unless clearly intended to the contrary, statutes have no effect beyond the boundaries of the state in which they are enacted. Even where legislation in one country may properly bind its citizens in another, express words are required or distinct implication, to give it this effect.[16]

The English Workmen's Compensation act[17] expressly provides that it shall apply to masters, seamen and apprentices to the sea service and apprentices in the seafishing service, provided that such persons are workmen within the meaning of the act, and are members of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in the United Kingdom. Aside from such exceptions, the English act has no extra territorial effect.

An Englishman employed by English employers under a contract of service entered into in England, who was killed by accident arising out of and in the course of his employment while working beyond the limits of the United Kingdom, was held not to be within the English act, and hence that his dependents could not recover compensation under that act on account of his death.[18]

A woman residing at Dover, England, went, at the request of a French woman, to Calais to do housework. On the second occasion of her making the trip she met with an accident in her employment. She filed application for compensation in the Dover County Court. Held, that she could not recover as there was nothing to show that the parties intended the contract of employment to be governed by the *lex loci contractus*.[19]

In Maxwell on the Interpretation of Statutes[20] it is said: "In the absence of an intention clearly expressed or to be inferred either from its language, or from the object or subject-matter, or history of the enactment, the presumption is that Parliament does not design its statutes to operate on them beyond the territorial limits of the United Kingdom. They are, therefore, to be read, usually, as if words to that effect had been inserted in them."

In Re American Liability Insurance Co.[21] the Workmen's Compensation statute of Massachusetts was held to have no extra territorial effect; the provisions of the statute not disclosing any intent that it should have such effect.

In considering this question in the case last cited the court called attention to several provisions of the statute tending to show that the act was not intended to have effect beyond the boundaries of the state. Section 19, of part 2, provides that an employe who has received an injury shall submit himself on request to an examination "by a physician or surgeon authorized to practice medicine under the laws of the commonwealth." The court said that it can hardly be inferred from this language that the Legislature intended that physicians or surgeons from Massachusetts should journey to the place of injury, or that those authorized to practice under the laws of other states should make the examination.

Part 3 of the act, which deals with procedure, and which creates a wholly new method of procedure, deals only with boards and courts within the commonwealth of Massachusetts. No provision is made for enforcing rights as to injuries occurring outside that state.

Section 7 of part 3 requires that the hearings of the committee on arbitration

(16) Merrill v. Boston & Lowell R. Co., 63 N. H. 259.

(17) 6 Edw. 7, c. 58, Sec. 7.

(18) Tomalin v. S. Pearson & Son, (C. A.) 100 L. T. Rep. 685, 25 T. L. Rep. 457 (1909), 2 K. B. 61, 78 L. J. K. B. 863, 2 Butterworth's W. C. Cas. 1.

(19) Hicks v. Maxton (County Court), 1 Butterworth's W. C. Cas. 150, 124 L. T. Jour. 135.

(20) 4th ed., pp. 212-213.

(21) Mass. Sept. 12, 1913, 102 N. E. 693.

shall be held in the city or town where an injury occurred. "Obviously this cannot relate to injuries received outside this commonwealth."

Section 11 of the act as amended by laws 1912, chapter 571, provides that in the event of resort to the courts copies of the papers shall be presented to the Superior Court for the county in which the injury occurred or for the County of Suffolk. The officers of the Industrial Accident Board are in Suffolk County, and courts are continually in session in that county. The procedure prescribed could hardly be followed in any county of a foreign state.

Section 18, of part 4, which authorizes the directors of the Massachusetts Employes' Insurance Association to make and enforce reasonable rules and regulations for the prevention of injuries on the premises of the subscribers, "and to this end its inspectors shall have free access to such premises during working hours," could not operate beyond the state.

It was further said by the court in this case: "It is apparent, from a comparison of the two acts, that our own follows in important particulars the provisions of the English act. That act (although it has been held generally to be inoperative outside the United Kingdom) in express terms applies to masters, seamen and apprentices in the sea service under certain conditions, and definitely points out the manner of proving and enforcing claims for injuries occurring therein with reference plainly to those outside the United Kingdom. If it had been the intention of the Legislature to include such injuries within the purview of the act, definite language in the English act to this end hardly would have been overlooked."

Extra Territorial Effect of the New Jersey Act.—In a New Jersey case, decided in the Essex Common Pleas Court, it was held that while the Workmen's Compensation statute of that state has no extra territorial effect, it requires the contract of hiring made between the employer and employe whereby they elect to be bound by the compensation features of the statute to have effect extra territorially. In this respect the court said: "The contract is binding on the employe himself and upon the employer, and it is constructively presumed that the parties have accepted the provisions of section 2 and have agreed to be bound thereby. It would seem that the reasonable construction of the statute is that it writes into the contract of employment certain additional terms. The cause of action of petitioner is *ex contractu*. The *lex loci contractus* governs the construction of the contract and determines the legal obligations arising from it. . . . The contract here was to be partly performed in New York and partly in New Jersey. The law of New York, the Admiralty law or the act of New Jersey applies. The parties chose the law of New Jersey by making the contract here without giving the notice required by the act to come under section 1. Shall the public policy of New Jersey to place the burden on the industry be carried into effect, or shall the sole loss fall on the petitioner in violation of the law of his state?"[22]

The court distinguishes between actions under the New Jersey act and those arising under the English act by holding that those under the latter act are actions *ex delicto*, while those brought under the New Jersey act are *ex contractu*.

First, it might be said that proceedings under the English act to recover compensation are not "actions" at all, in the technical sense of that term.[23] In the second place, actions *ex delicto* presuppose a wrong done by the person against whom the action is brought. Recovery of compensation under the English act does not depend upon any wrong doing on the part of the employer; the injury for which recovery is had may have been due to the employe's own negligence.

(22) Deeny v. Wright & Cobb Litherage Co., 36 N. J. L. J. 121.

(23) Sutton v. Great Northern R. Co., 101 L. T. Rep. 175 (1909), 2 K. B. 791, 2 Butterworth's W. C. Cas. 428.

The "contract" referred to by the court is one made by employer and employe to signify their intention to be bound by the compensation features of the statute. In this respect, the New Jersey act provides: "Such agreement shall be a surrender by the parties thereto of all their rights to any other method, form or amount of compensation or determination thereof than as provided in section 2 of this act, and an acceptance of all the provisions of section 2 of this act, and shall bind the employe himself and for compensation for his death shall bind his personal representatives, his widow and next of kin, as well as the employer, and those conducting his business during bankruptcy or insolvency. . . . The contract for the operation of the provisions of section 2 of this act may be terminated by either party upon sixty days' notice in writing prior to any accident."

The provisions of the act here given are sufficient to show that the contract has nothing to do directly with the matter of compensating the employe for injuries. It is merely an agreement to be bound by the provisions of the statute, which are all controlling of the question. The question of what the parties intend with regard to the territorial application of their contract is entirely immaterial; the question of compensation must be settled by the terms of the statute, and this cannot be done where the statute has no application. The parties merely agree to be bound by the law as it is. Their agreement does not extend the operation of the law, or affect it in any other manner.

When the State Compensation Acts Conflict with Federal Statutes.—Whenever Workmen's Compensation statutes adopted by the states conflict with statutes enacted by Congress in respect to subjects over which it has jurisdiction, the state statutes must give way. In a few instances the power of the United States and that of the states are concurrent; that is, the states may exercise their powers relative to such subjects when the United States has not done so. But when the federal government has assumed jurisdiction, the power of the states, when exercised in conflict therewith, is abortive.[24] This necessarily follows from the position given by the constitution to legislation in pursuance of it, as the supreme law of the land.

When Congress has not exercised its power in respect to some matter over which its jurisdiction is not exclusive, the states are at liberty to assume jurisdiction thereover until such time as Congress sees fit to act.[25].

Conflict with Maritime Law—The federal constitution[26] provides that the judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction. The Judicial Code of the United States[27] gives to the district courts original jurisdiction of all civil causes of action of admiralty and maritime jurisdiction, "saving to suitors in all cases the right of a common law remedy where the common law is competent to give it;" and provides that "The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several states."

The common law remedy here mentioned is the right of a plaintiff to proceed in personam against a defendant, which remedy the common law is competent to give. But the right to proceed *in rem* is distinctly an admiralty remedy, and hence exclusively within the control of the United States courts.[28]

This remedy saved to suitors is a common law remedy, not a remedy in the common law courts. And it was not the intention to give to suitors all such remedies as might afterwards be enacted by state

(24) Cummings v. Chicago, 188 U. S. 411, 47 L. Ed. 525; Ex parte Clark, 100 U. S. 399, 25 L. Ed. 715.

(25) Denny v. Bennett, 128 U. S. 489, 32 L. Ed. 491.

(26) Art 3, Sec. 2.

(27) Act March 3, 1911, c. 231; U. S. Comp. Stat. Supp. 1911, p. 135, Secs. 24, 256.

(28) Benedict's Admirality, Sec. 128; The Moses Taylor, 4 Wall. (U. S.) 411, 18 L. Ed. 397.

statutes, for this would enable the states to make the jurisdiction of their courts concurrent in all cases by simply providing a statutory remedy for all cases. In this way the exclusive jurisdiction of the federal courts would be defeated.[29]

Hence, it cannot be said that a state statute, for instance, the Workmen's Compensation statute of Washington, providing for the abolishment of all common law remedies in cases of personal injuries to servants, and establishing, in lieu thereof, a remedy purely statutory and unknown to the common law, comes within the clause "saving to suitors in all cases the right of a common law remedy; where the common law is competent to give it." It is equally clear, in view of the constitutional provision extending the judicial power of the United States to "all cases of admiralty and maritime jurisdiction," that any attempt of a state to replace the maritime law to any extent with enactments of her own would be unconstitutional.

In the case of The Lottawanna[30] the court said: "The constitution must have referred to a system of law co-extensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several states, as that would have defeated the uniformity and consistency at which the constitution aimed on all subjects of a commercial character affecting the intercourse of the states with each other or with foreign states."

It has been expressly held that the Washington Compensation statute does not withdraw from a workman injured while employed on a vessel his right to proceed in admiralty against the vessel to enforce the lien given by the maritime law for his injury.[31]

C. P. BERRY.

St. Louis, Mo.

(29) The Hine v. Trevor, 4 Wall. (U. S.) 555, 571, 572, 18 L. Ed. 451.

(30) 21 Wall. (U. S.) 558, 576, 22 L. Ed. 654.

(31) The Fred E. Sander, 208 Fed. 724.

COVENANTS—REMOTE GRANTEE.

SOLBERG et al. v. ROBINSON et al.

(Supreme Court of South Dakota. May 11, 1914.)

147 N. W. 87.

A remote grantee of one who had apparent, but not actual title could recover for breach of grantor's covenant for quiet enjoyment, though neither such grantor nor his immediate grantee ever had possession, since Civ. Code, § 1139, makes such a covenant run with the land, and, while it may be necessary that some estate must have passed, there was constructive possession, which was sufficient to create a privity of estate.

(Statement of Facts Omitted.)

[1] It is contended by appellant that, as Robinson had neither possession nor right of possession at the time he executed the deed to the Smiths, the covenants sued upon were broken as soon as made, and therefore did not run with the land nor inure to the benefit of his remote grantees. As to the covenant of seisin, this contention is undoubtedly correct. Our statute (section 1139, Civ. Code) enumerates certain covenants as those which run with the land; but no mention is made of the covenant of seisin, and this covenant does not run with the land. Gale v. Frazier, 4 Dak. 196, 30 N. W. 138. Under a statute like ours it would appear that it is only the immediate grantee of the covenantor who can recover on this covenant. Plaintiffs could have recovered from the Smiths upon the breach of this covenant, and they, in turn, could have recovered from defendant, provided they brought their action within the period of the statute of limitations. 3 Wash. Real Property (5th Ed.) 504. But there was no such privity of contract between plaintiffs and defendant's intestate as would entitle them to recover against defendant.

[2] The other covenant set out in plaintiff's complaint (that of quiet enjoyment) presents a different proposition. By express statute, this covenant does run with the land. Civ. Code, § 1139. This covenant is made for the benefit of remote as well as immediate grantees, and, unless there is something in the facts connected with this case to relieve appellant from liability on the covenant, the plaintiff is entitled to recover, and the judgment should be affirmed. This is conceded by appellant, but, to avoid liability, he contends that, because his intestate had no estate whatever in the premises at the time of making the covenant,

and because his intestate's grantees did not go into possession of the land, there was nothing to which the covenant could attach to carry it to the covenantor's remote grantees. He also contends that, the covenantor having neither possession nor right of possession at the time he made the covenant, a constructive eviction took place at onec, and that the covenant immediately ripened into a cause of action in favor of his covenantee that neither ran with the land nor passed to his covenantee's grantee, and that, in any event, more than six years had elapsed since the breach of the covenant, and plaintiff's action is barred by the six-year statute of limitations. In other words, that in this particular case the effect of both covenants is exactly the same, and plaintiffs are not entitled to recover on either. If appellant's position is correct, the covenant for quiet enjoyment contained in the Robinson deed could never, under the facts in this case, become the basis for a recovery by anyone except his immediate grantee. Although the deed purporting to divest Vesey of his title was a forgery, and conveyed no title in fact, it appeared upon its face to be a valid conveyance, and the apparent chain of title from Vesey to plaintiffs was perfect. For aught plaintiffs knew or could know until Vesey asserted his title, they were the absolute owners of the fee, and could have gone into the physical possession of the land at any time. Supposing plaintiffs had taken possession and afterward had learned the facts relative to the title to the land, and, before they had been disturbed by Vesey, had brought this suit against defendant for breach of the covenant for quiet enjoyment, he could have said: "You have not been disturbed in your rightful possession of the land, and you may never be disturbed. While your deed may not be good, it is yet color of title, and, if you are not disturbed by Vesey within the time for bringing an action for that purpose, your present title, although defective, will ripen into a title that can never be disturbed by any one. In other words, you have no cause for action until you have been actually ousted by a decree of court." This would be a complete defense to plaintiffs' demand, or the most they could recover would be nominal damages only.

That the proposition that covenants found in deeds purporting to convey title to land do not run with the land, unless the covenantor was possessed of some state in the land to which the covenant could attach is supported by many, if not the great weight of, judicial decisions, is not questioned. Notable among the more recent decisions to this effect is Bull v. Beiseker, 16 N. D. 290, 113 N. W. 870, and reported, with an extended note, in 14 L. R. A. (N. S.) 514; Mygatt v. Coe, 147 N. Y. 456, 42 N. E. 17; and Wallace v. Pereles, 109 Wis. 316, 85 N. W. 371, 53 L. R. A. 644, 83 Am. St. Rep. 898. In Bull v. Beiseker, supra, the court said: "The action was brought and the complaint framed upon the mistaken theory that the covenants contained in defendants' deed to Johnson were covenants running with the land, and therefore passed to Washburn by the deed from Johnson to him. This probably would be true if any title or possession was transferred by such conveyance; but, under the facts alleged in the complaint, neither title nor possession, actual or constructive, passed under the deeds, and hence there was nothing for the covenants to run with. There was a constructive eviction of the grantee immediately upon the execution and delivery of the deed to Johnson, and a cause of action for breach of the covenants in such deed at once arose in his favor against the Besiekers to recover damages therefor; and the deed from Johnson to Washburn did not operate to assign to the latter such cause of action." And in Wallace v. Pereles, supra, the Wisconsin court said: "We therefore hold that where the record shows that the grantor had no title and no possession, and there is no proof that the grantee took possession, the covenants of the grantor are personal to the grantee, and are not transmitted to subsequent grantees by a mere conveyance of the land." And again, in Mygatt v. Coe, supra, we find: "It must be regarded as the law of this case that privity of estate is essential to carry covenants of warranty and quiet enjoyment to subsequent grantees in order to support a right of action by them against the original covenantor, when there is an eviction by paramount title." These cases are fully supported by very many, if not all, of the preceding decisions on the same subject.

The covenants usually found in deeds of conveyance of real property are the subject of legislative enactment in many of the states. Our statute (section 1138, Rev. Civ. Code) reads as follows: "Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it then in existence, runs with the land." Section 1139: "The last section includes covenants of warranty, for quiet enjoyment, or for further assurance, on the part of a grantor. * * *" But these statutes do not seem to have changed the rule that, in order that the covenant will run with the land so as to inure to the benefit of a remote grantee,

the covenantee must have received some estate in the land to which the covenant could attach.

It seems to be generally held that, where the covenantor delivers the possession of the land to his grantee, and he, in turn, puts his grantee in possession, this constitutes a privity of estate sufficient to carry the covenant with the land. And it may be taken as true that the reason for the rule originated at a time when physical possession of land was the chief muniment of title thereto. But this reason no longer exists. A person who has a grant of land from the owner of the fee becomes the absolute owner thereof, and is entitled to all the benefits that can be derived therefrom, even though neither of them was ever in the actual possession thereof. This being the case, why should it be necessary that actual, as distinguished from constructive, possession should be delivered in order to carry a covenant with the land when the covenantor was without title? It is for the purpose of protecting the covenantee and his grantees in their right of possession of the land, and to protect them against defective title thereto, that the covenant is made. The right of quiet enjoyment of a piece of land is its most valuable attribute, and a covenant from a grantor that his grantee shall be protected in the quiet enjoyment thereof adds materially to the value of the land itself, and a material portion of the consideration paid for the grant may be, and as a rule is, paid because of the covenantee's expectation of the right of quiet enjoyment of the demised premises. If a perfect title is passed to the grantee, then he need never avail himself of the covenant in his deed; while, on the other hand, if it should develop that the covenantor had no estate whatever in the premises attempted to be conveyed, the grantee could not, except as against his immediate covenantor, avail himself of the covenant. This, at least is the logical conclusion to be drawn from the decisions holding that a remote grantee cannot recover upon a covenant, unless the covenantor had some estate in the land when the covenant was made. Some cases, notably, Kimball v. Bryant, 25 Minn. 496, and Iowa Loan & Trust Co. v. Fullen, 114 Mo. App. 633, 91 S. W. 58, hold that, although a covenantor must have some estate in land at the time of making the grant to which covenants can attach in order to enable a remote grantee to recover on a breach of the covenant, yet, nevertheless, such grantee, however remote, who is holding under said grant at the time of the assertion of, and eviction under, the paramount title, may recover the damages occasioned by the lack of title. This is upon the ground that the covenant was broken as soon as made, and at once ripened into a chose in action in favor of the covenantee, and that the transfer of the land by successive warranty deeds passed this cause of action along through the successive grantees until such time as an actual eviction by paramount title took place, when the party who suffered damage by reason thereof might enforce the cause of action that accrued in favor of the first grantee against the original covenantor. Against this doctrine, this court is already committed. Hills v. City, 145 N. W. 570. We believe plaintiffs should recover; but we think they should recover as upon the covenant itself, rather than upon successive assignments of a cause of action that had accrued in favor of some prior grantee. Under the theory adopted by the Missouri and Minnesota courts, unless the eviction takes place and the action be commenced within the period prescribed by the statute of limitations for bringing such action, then the right to recover will be barred by the statute, and the party who is holding under the grant at the time of the eviction and the one who suffers the real damage cannot reach the covenantor at all. Iowa L. & T. Co. v. Fullen, supra.

[3] But, again, since it is held that a delivery of the possession of the disputed premises is necessary in order that the covenant of a grantor without title may inure to the benefit of his remote grantees, then the constructive possession of the grantee ought to be sufficient to carry the covenant. In this case, while the Smiths acquired no title to the land by virtue of their deed from the Robinsons, still they had the apparent title even as against Vesey himself. The county records showed they had a perfect chain of title, and therefore the Smiths and their grantees (plaintiffs in this action), as against the defendant, should be held to have had constructive possession of the granted premises, and that plaintiffs are entitled to recover against the defendant because of the eviction by Vesey. This, of course, involves the doctrine of estoppel by deed, and we believe this to be a proper case for the application of this doctrine.

The rule of estoppel by deed is stated in 16 Cyc. 686, as follows: "A person who assumes to convey an estate by deed is estopped, as against the grantee, to assert anything in derogation of the deed. He will not be heard, for the purpose of defeating the title of the grantee, to say that at the time of the conveyance he had no title, or that one passed by the deed, nor can he deny to the deed its full operation and effect as a conveyance.'

Where a grantor represents himself as the owner of the fee to a piece of land, and agrees that he will protect his grantee and assigns in their peaceful possession thereof, and it afterward develops that he was not the owner of the fee, and cannot defend his grantees in their possession of the land, and they call upon him to respond in damages, why should he not be estopped from saying that he did not have, and convey the constructive possession of the land as he represented he had, and for which he had received a valuable consideration, and that therefore his covenant did not pass beyond his immediate grantee, and that he is not liable to the party who has suffered by his broken covenant? And why should the rule just quoted not apply?

True, no case has been called to our attention where a covenantor has been held to be estopped by his deed from claiming that he had not estate in the land, attempted to be conveyed, at the time he made the covenant, and thereby escape liability to a remote grantee who had been evicted; but neither has any reason been suggested why this should not be done, and we hold that the defendant is estopped by the covenants in his intestate's deed from denying that his intestate possessed any estate in the land in question at the time the deed was made, and that respondent is entitled to recover upon the broken covenant.

* * *

The judgment should be modified in regard to the amount of interest allowed respondents as herein indicated, and as so modified it is affirmed.

NOTE.—*Right of Remote Grantee under Covenant of General Warranty.*—There seems to be not much dispute that there must be title or possession so as to make a covenant of general warranty go over to a grantee's grantee or to any subsequent grantee, though one or two cases are to be found which do extend its operation. Immediately, however, we wish to note what the instant case says as to the remote grantee being protected, because of constructive possession. As we understand the doctrine of constructive possession there was none in defendant in this case. The land in this case was vacant and unoccupied and the court rules, that the apparent title of record carried constructive possession, though the real title was elsewhere—the appearance of title being divested out of the true owner, because of the existence of a forged deed of record. It is familiar that color of title may extend actual possession to the boundaries described in the color of title, but we have never heard, that an apparent title of an unoccupied tract created any constructive possession whatever. For example, where persons have possession of land in common, the rightful possession is in him who has the legal title. Quillen v. Betts, 1 Pennevill (Del.) 53, 39 Atl. 595, Spencer v. Christian Church's Trustee v. Thomas, 27 Ky. L. R. 250, 84 S. W. 750. To say there may be constructive possession, where there is no occupancy, as against the true owner is a singular statement; to extend possession under color of title seems a vastly different thing. It is to be noted that the instant case cites no authority for its statement. Though a grantor has neither title nor possession when he conveys, it has been held that if his grantee takes possession under the deed the covenant of warranty inures to remote grantees in continuous possession. Tillotson v. Prichard, 60 Vt. 94, 14 Atl. 302, 6 Am. St. Rep. 95. It was insisted that it was necessary for the covenantor to have had possession when he conveyed. The court said: "The first time the question whether the covenant passes, as attached to the land, can arise is when the covenantee assigns the estate: and if he then has possession of the land, holding it under his deed, why does not the covenant pass with the land? To so hold does no injustice to the covenantor. He is only called upon to make good his covenant."

It was ruled in Wallace v. Pereles, 109 Wis. 316, 85 N. W. 371, 53 L. R. A. 644, 83 Am. St. Rep. 808, that a conveyance by one without title and without possession to one who does not take possession does not carry a covenant to a remote grantee, but the court said: "Whether, if defendant grantee entered into the immediate possession of the land after delivery of the deed, that fact would be sufficient to carry the covenants, is a matter of some doubt. There are respectable authorities upon both sides of the question, but, it not being fairly in this case, we leave it for future consideration."

And in Kimball v. Bryant, 25 Minn. 496, where the remote grantor had neither title nor possession, it was held that because the principle that the covenant was personal and did not run with the land, it did not follow that there was no benefit therein to a remote grantee. It was said: "The covenant is taken for the protection and assurance of a title which the grantor assumes to pass by his deed to the covenantee; and, where the covenantee assumes to pass that title to another, it is fair to suppose that he intends to pass with it, for the protection of his grantee every assurance of it that he has, whether resting in right of action, or in unbroken covenant; so that if, before enforcing his remedy for breach of the covenant, the covenantee execute a conveyance of the land, unless there be something to show a contrary intention, it may be presumed that he intends to confer on his grantee the benefit of the covenant so far as necessary for his protection." The court said cases holding to the contrary arose in states where choses in action are not assignable.

In Randolph v. Kinney, 3 Rand (Va.) 394, the doctrine of the covenant being continued, was held to apply where the first grantee and his successors entered into possession.

It would appear upon the whole that the rule we speak of is rather technical and should be done away with and the suggestion offered in the Minnesota case, *supra*, ought to have this effect. Possession without any title ought not to create the privity necessary if it does not otherwise exist, because that may be merely transitory, and title under our system of recording is given sufficient protection, and, therefore, if a party wish

to enter into the sort of covenant involved, he ought to be allowed to do so. Its enforcement will have no tendency whatever against any public policy. C.

ITEMS OF PROFESSIONAL INTEREST.

WHO SHOULD MAKE THE LAWS—LAYMEN OR LAWYERS?

Somebody is out with a war club for the legal profession. His name is Solward, according to the press reports, and he lives in San Antonio, Texas. His indictments of the profession is directed mainly at the alleged incapacity of lawyers to make laws.

Are lawyers good law makers? Probably not in most cases. And yet the most conspicuous law makers of all history were lawyers.

Lawyers are of two types, the jurist and the practitioner. The former usually makes a good judge and a good legislator. The trial lawyer, on the other hand, is not, by training, adapted to such work. He is accustomed to taking sides; he sees only one aspect of a case at a time and in drawing a statute to meet a certain evil will proceed so intensely to effect this one purpose that while the particular evil is fully met, another is often created.

Laymen frequently make good legislators, provided they are men of broad education and have the deliberative mind that refuses to enthuse over one aspect or result of proposed legislation until it has thoroughly considered its effect from other standpoints.

Legislation is a science and like other sciences requires trained men to practice it. In England the laymen predominate in Parliament for the reason that the electorate return men of letters and liberal education, fitted by their wide culture to take a comprehensive view of public questions coming before them.

The trouble in this country is that the lawyer is apparently the only man of education and culture who will forsake the pursuit of gold long enough to serve his state or his county in a matter which brings so little recompense in things material.

Instead of attacking the profession for monopolizing legislative offices, we suggest to our lay critic that his services pro bono publico would be better directed in arousing a more sacrificing public spirit on the part of the laymen of education and culture.

Let constructive intellects like Morgan, Hill, Edison, Ford and others so prominent in the business world be given as freely to the public service as have the great intellects of Madison, Webster, Clay, Root and other great lawyers, who willingly offered up on the altar of public service so much of their valuable time and experience. Then will our laws more accurately and more broadly meet the public situations and exigencies that cry for effective solution.

HUMOR OF THE LAW.

During cross-examination in a case recently tried in a Western court counsel put the following question:

"You say that the defendant turned and whistled to the dog. What followed?"

"Why," said the witness, with a surprised air, "The dog of course."—Green Bag.

In England they tell the story of how a judge set free a man whom he believed to be a rogue.

The prisoner pleaded guilty of larceny, and then withdrew the plea and declared himself innocent. The case went to a jury, and the man was acquitted. Then the justice said:

"Prisoner, a few minutes ago you said you were a thief. Now the jury say you are a liar. Consequently, you are discharged."—Green Bag.

In a New Brunswick village, a town character who preferred emphasis to the verities, was a witness in a petty trial involving an auger. He positively identified it as the property of the parties to the suit.

"But," asked the attorney for the other side, "do you swear that you know this auger?"

"Yes, sir."

"How long have you known it?" he continued.

"I have known that auger," said the witness impressively, "ever since it was a gimlet."

A buxom farm lass was recently called as a witness in a case in an English county court. The girl hapened to mention her sweetheart knew something about the matter.

"Oh," said the judge, "then I think we had better call him to court."

The girl blushed furiously.

"It won't do any good, sir," she protested. "Ah'm fair put to it to get him to court when we're alone, an' Ahm sure he won't do it before all you gentlemen."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

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1. **Appeal and Error**—Verdict.—One who sues for actual and punitive damages and recovers judgment for punitive damages only cannot on appeal raise the question that the jury could not allow punitive damages without also allowing actual damages.—Dees v. Thompson, Tex. Civ. App., 166 S. W. 56.

2. **Attorney and Client**—Disbarment.— A proceeding to disbar an attorney is neither a civil nor a criminal action, but is a proceeding sui generis, the object of which is not the punishment of the offender but the protection of the court.—In re Davis, Mo. App., 166 S. W. 341.

3. **Bailment**—Election.—Upon a bailee's refusal to return property loaned, the bailor may either sue to recover the specific property as in replevin, or treat the bailee's refusal as a conversion of the property and recover its value, and if bailor sue to recover the specific property, he may demand damages for its use while wrongfully detained.—Missouri River Transp. Co. v. Minneapolis & S. L. Ry. Co., S. D., 147 N. W. 82

4.——Superior Force.—The bailee may show as a defense that property was taken from him by process of law or by one having a paramount title, though he cannot set up the tortious possession of the bailor, unless the true owner has actually claimed the property and taken possession thereof.—Street v. Farmers' Elevator Co., of Elkton, S. D., 146 N. W. 1077.

5. **Bankruptcy**—Discharge.—A discharge in bankruptcy does not extinguish a judgment lien, except in so far as it imposes a separate liability on the bankrupt.—Olsen v. Nelson, Minn., 146 N. W. 1097.

6.——Preference.—Where the court in a bankruptcy proceeding found that the application of a deposit by the bankrupt on a debt due a bank constituted a preference, its decree properly authorized the bank, upon payment of the deposit, to file a new or amended claim for the sums found to be preferences.—In re Wright-Dana Hardware Co., U. S. C. C. A., 212 Fed. 397.

7. **Bills and Notes**—Alteration.—Fraudulent alteration of the time of payment and the amount of principal of a note and extracting a material condition therefrom held to avoid the note, even in the hands of a bona fide purchaser for value without notice.—First Nat. Bank of Iowa City, Iowa, v. Dorsey, Tex. Civ. App., 166 S. W. 54.

8.——Consideration.—Where a note is taken as collateral security for a debt then created, the debt is sufficient consideration to support the note.—First Nat. Bank of Iowa City, Iowa, v. Humphreys, Tex. Civ. App., 166 S. W. 53.

9. **Breach of Marriage Promise**—Damages.—In an action for breach of marriage promise, evidence that plaintiff had told her father and sister and written friends of her betrothal to defendant held admissible to prove humiliation and injury to her feelings as an element of damages.—Katsura v. Saletopulos, Neb., 146 N. W. 1022.

10.——Exemplary Damages.—Exemplary damages may be allowed in an action for a breach of marriage promise, where there are circumstances of aggravation.—Luther v. Shaw, Wis., 147 N. W. 17.

11. **Carriers of Live Stock**—Delay.—An unreasonable delay in the transportation of live stock is not justified by the maintenance by the carrier of a schedule resulting in such delay.—S. Louis, S. F. & T. Ry. Co. v. Armstrong, Tex. Civ. App., 160 S. W. 366.

12. **Carriers of Passengers**—Baggage.—A carrier receiving two trunks containing samples, where no misrepresentations are made as to their contents, and it receives a small amount for overweight, is liable as a bailee for hire, where the contents are injured by the negligence of the carrier.—Tamarin v. Pennsylvania R. Co., Pa., 90 Atl. 433.

13.——Elevators.—That an elevator in an office building had been in use 20 years before it broke, injuring a passenger, through a latent defect existing when it was installed does not affect the question of negligence, and liability of the elevator owner therefor, of the manufacturer in not making a test which would have disclosed it.—Dibbert v. Metropolitan Ins. Co. Wis., 147 N. W. 3.

14.——Stipulations.—Where a passenger ticket purports to be a contract ticket offered for a reduced rate, the passenger is bound by its lawful stipulations.—Chicago R. I. & G. Ry. Co. v. Howell, Tex. Civ. App., 166 S. W. 81.

15. **Confusion of Goods**—Forfeiture.—That 473 head of mortgaged cattle were mingled with 266 cattle mortgaged by the same owner to another held not to work a forfeiture of the latter mortgagee's rights.—Clay, Robinson & Co. v. Larson, Minn., 146 N. W. 1095.

16. **Contracts**—Comity.—A contract which is illegal because contrary to a state statute will not be enforced whether entered into within or without the state.—Standard Fashion Co. v. Grant, N. C., 81. S. E. 606.

17.——Employment.—Where plaintiff, who could, under his contract with defendant, work whenever he desired, had a private arrangement with a third person, who acted as his substitute and looked alone to him for compensation, plaintiff, while at work, was an employee of defendant.—Louisville, H. & S. L. Ry. Co. v. Armes, Ky., 166 S. W. 190.

18.——Gratuitous Services.—Stricter proof is required of a contract between near relatives to pay for personal services, etc., rendered in the family than is required to prove ordinary contracts.—Allen v. Allen, Ky., 166 S. W. 211.

19.——Preliminary Negotiations.—Writings will not be construed as a contract when intended only as preliminary negotiations to be followed by a formal contract containing other material provisions.—Goldstine v. Tolman, Wis., 147 N. W. 7.

20.——Public Policy.—A provision of a contract to exempt another from liability for violation of law is contrary to public policy and void.—Cooper v. Northern Pac. Ry. Co., U. S. D. C., 212 Fed. 533.

21——Unilateral.—A contract for the sale of cotton is not unilateral where it is signed by both parties, recites a part payment, and shows an agreement to sell and also an agreement to pay a specified price.—Hamby v. Truitt, Ga. App., 81 S. E. 593.

22. **Corporations**—Notice.—Corporations will be taken to have been advised as to facts within the knowledge of its officers, especially with respect to that part of the corporate business over which the officer has some control.—Griffith v. Supreme Council of Royal Arcanum, Mo. App., 166 S. W. 324.

23.——Insolvency.—The assets of an insolvent corporation are subject to a trust for the benefit of its creditors.—In re Fechheimer Fishel Co., U. S. C. C. A., 212 Fed. 357.

24.——Surety Companies.—Act. Cong., August 13, 1894, does not authorize surety companies coming within its provision to enter a state and transact business therein without the state's consent or without complying with conditions

prescribed by the state.—Commonwealth v. Fidelity & Deposit Co. of Maryland, Pa., 90 Atl. 437.

25. **Covenants**—Breach.—The rule that the measure of damages which a purchaser may recover is the difference between the consideration given for the land and the value thereof does not apply in cases of breach by the vendor of a warranty.—Luckenbach, v. Thomas, Tex. Civ. App., 166 S. W. 99.

26.——Remote Grantee.—A remote grantee of one who had apparent, but not actual, title could recover for breach of grantor's covenants for quiet enjoyment, though neither such grantor nor his immediate grantee ever had possession, since Civ. Code, § 1139, makes such covenant run with the land, and, while it may be necessary that some estate must have passed, there was constructive possession, which was sufficient to create a privity of estate.—Solberg v. Robinson, S. D., 147 N. W. 87.

27. **Criminal Law**—Accomplice.—In order to make one guilty as an accomplice, it is not necessary that he and the principal should have entered into an agreement to commit the offense, but only that, before the act was done, he advised, commanded, or encouraged the principal to commit the offense.—Bragg v. State, Tex. Cr. App., 166 S. W. 167.

28.——Election.—Where, on a trial for unlawfully selling liquors, the evidence of the state showed different sales, the court did not err in refusing to compel the state to elect which sales it would rely on for a conviction.—State v. Cardwell, N. C., 81 S. E. 628.

29.——Misdemeanor.—A person who in any way aids or abets the commission of a misdemeanor may be convicted as a principal.—Moody v. State, Ga. App., 81 S. E. 588.

30.——Res Gestae.—A statement by decedent, made a few minutes after he was shot, is admissible as a part of the res gestae.—Lopez v. State, Tex. Cr. App., 166 S. W. 154.

31. **Damages**—Building Contract.—Where a builder's contract with the government contained a daily damage clause for delay, and he inserted a similar clause in a contract with plaintiff, a sub-contractor, but was relieved by the government from liability under such clause of his own contract, he could only enforce the clause in plaintiff's contract to the extent of such actual damages as he could prove.—Bedford v. J. Henry Miller, U. S. C. C. A., 212 Fed. 368.

32.——Exemplary.—Exemplary damages may be recovered in a civil action, although the defendant may have been punished criminally for the same act.—Luther v. Shaw, Wis., 147 N. W. 18.

33.——Punitive.—A verdict for punitive damages alone is improper, if there was no evidence tending to show at least nominal actual damages.—Bethea v. Western Union Telegraph Co., S. C., 81 S. E. 675.

34.——Special.—A party to a contract, to recover special damages for a breach thereof, must allege that the adverse party at the time of the making of the contract knew the peculiar circumstances which would give rise to special damages in case of a breach.—Simkins v. Western Union Telegraph Co., S. C., 81 S. E. 657.

35. **Death**—Presumption from Absence.—To raise the presumption of death from absence, it must appear that the person has been absent for seven or more years, and that he has not been heard from during that time by those who would be expected to hear from him.—Sizer v. Severs, N. C., 81 S. E. 685.

36.——Presumption from Absence.—The death of an absent person may be presumed in less than 10 years from the date of the last intelligence of him from facts other than those showing his exposure to a danger which probably resulted in his death.—Coe v. National Council of Knights & Ladies of Security, Neb., 147 N. W. 112.

37.——Self Defense.—One is not justified in taking human life in order to defend himself against slight violence, but there must be a reasonable apprehension of death or great bodily harm.—Shields v. Neal, Ky., 166 S. W. 211.

38. **Deeds**—Equity.—A court of equity will not aid in divesting an estate for a breach of a covenant, when compensation can be made, but will relieve against forfeiture claimed by strict construction of any common-law rule.—Carolina & N. W. Ry. Co. v. Carpenter, N. C., 81 S. E. 682.

39.——False Representation.—Where the false representations of a vendor did not constitute a material inducement to the purchaser, nor influence him at the time of the purchase, the representations did not justify the setting aside of the deed.—Camp v. Smith, Tex. Civ. App., 166 S. W. 22.

40. **Equity**—Adequate Remedy. — A legal remedy is not adequate, so as to prevent equity from taking jurisdiction, unless it is as practical and efficient to secure the administration of justice as is the equitable remedy.—Supreme Lodge of Fraternal Union of America v. Ray, Tex. Civ. App., 166 S. W. 46.

41. **Estoppel**—Further Estoppel.—An estoppel by deed may be prevented by the existence of an estoppel in pais, and there may be an estoppel against an estoppel.—Street v. Farmers' Elevator Co. of Elkton, S. D., 146 N. W. 1077.

42.——Lien.—Surety on notes given in renewal of purchase-money notes, whose negligence in not possessing himself of the original notes enabled the purchaser to obtain them and a release of the lien, held estopped to assert a lien superior to that of a purchaser from his principal, to the extent of the purchase price paid in cash.—Hicks' Committee v. Smith, Ky., 166 S. W. 248.

43. **Executors and Administrators** — New Promise.—Where a suit against an executrix, brought within the period of limitations prescribed by the general and special statutes, was dismissed, a new cause of action brought within the time prescribed by the general statute of limitations stopped the running of the special statute.—Knisely v. Leathe, Mo., 166 S. W. 257.

44. **Fraud**—Opinions. — Mere opinions and promises or indefinite statements will not constitute fraud available as a defense in an action on a note given for the price of shares of corporate stock.—Huffstetler v. Our Home Life Ins. Co., Fla., 65 So. 1.

45. **Frauds, Statute of**—Memorandum. — A written memorandum required by the statute of frauds may consist of several letters between the parties.—Herman Bros. Co. v. Wacker, Neb., 147 N. W. 127.

46.——Parol Contract.—After a bankrupt corporation, whose affairs have been liquidated, has gone out of existence, stockholders cannot enforce a parol contract with reference to property formerly owned by it, made by them in their individual capacity with a third person.—Willis v. Lam, Ky., 166 S. W. 251.

47. **Garnishment**—Jurisdiction.—Where prior to suit brought in Tennessee against F., a resident of New York, by garnishment of an indebtedness owing by a resident of Tennessee, suit had been instituted by F. against the garnishee in New York, and that court had acquired jurisdiction of the subject-matter, the indebtedness could not be made a basis of jurisdiction of the courts of Tennessee.—Lowenstein v. Levy, U. S. C. C. A., 212 Fed. 383.

48.——Pledge.—Whether money pledged with the sureties on a bail bond to secure them is subject to garnishment depends on whether the pledgee's rights will be prejudiced thereby, and not on whether the property is in custodia legis.—Waggoner v. Briggs, Tex. Civ. App., 166 S. W. 50.

49. **Gifts**—Revocation.—A gift causa mortis is revocable during the life of the donor.—O'Gorman v. Jolley, S. D., 147 N. W. 78.

50. **Good Will**—Covenant.—A seller's contract that he "will not go into, or conduct, directly, or indirectly, a plumbing, tinwork, or heating business within the county," held broken by his taking employment as a skilled workman with the buyer's competitors, and by his entering into a contract to install a heating apparatus, and to do other work to be paid for by the hour, day, or piece.—Ammon v. Keill, Neb., 146 N. W. 1009.

51. **Guaranty**—Forfeiture.—The fact that the note sued on was given by defendant to guar-

antee the payment by a contract purchaser of land of the consideration of the purchase, and not as a forfeit upon the purchaser's failure to perform, would not be a defense to an action on the note by vendor on the purchaser's failure to perform.—Sears v. Ainsworth, Tex. Civ. App., 166 S. W. 60.

52.——Notice.—A guaranty governed by the laws of Illinois, and reciting a consideration, takes effect as soon as it is acted upon, without notice to the guarantors of its acceptance.—State Bank of Chicago v. King, Pa., 90 Atl. 453.

53.——Transfer of Note.—An absolute unconditional general guaranty of the payment of a note goes with the note without assignment to a transferee of the note. —Home Savings Bank of Fremont v. Shallenberger, Neb., 146 N. W. 993.

54. **Hawkers and Peddlers**—Corporation.—A corporation cannot be licensed as a peddler. —Singleton v. State, Ga. App., 81 S. E. 596.

55. **Homicide**—Aggressor.—Where defendant was the aggressor and handed his pistol to his co-defendant telling him to shoot decedent, which he did, defendant was the principal offender and could not rely on self defense.—State v. Robertson, N. C., 81 S. E. 689.

56.——Duty to Retreat.—While one assaulted should, unless he reasonably apprehends that he is in danger of death or great bodily injury, ordinarily retreat before killing his assailant, yet the fierceness of the assault and the ability of his assailant to inflict injury may be considered in determining the propriety of his course.—State v. Gaddy, N. C., 81 S. E. 608.

57.——Reputation.—A witness called to testify as to deceased's reputation for being a dangerous man cannot testify as to the particular act which led him to deem deceased to be a dangerous person.—State v. Melton, N. C., 81 S. E. 602.

58. **Husband and Wife**—Ante-nuptial Contract.—There being nothing inherently suspicious about ante-nuptial contracts, which ordinarily should be regarded with favor, the burden is upon one impeaching such a contract to show its invalidity, though anything about such an instrument which, considering all the circumstances, indicates undue influence, will overcome its prima facie validity. —Oseau v. Oseau's Estate, Wis., 147 N. W. 62.

59.——Estoppel.—A wife, who knows that her husband is assuming to act for her in making a sale of her property, owes a plain duty to disavow his act in order that the buyer may not be prejudiced by the husband's assumption of authority.—Journal Pub. Co. v. Barber, N. C., 81 S. E. 694.

60.——Estoppel.—A mortgage on property belonging in severalty to a husband and wife to secure what purported to be a loan of money to them made a prima facie case as to the liability of the wife; but she is not estopped by the form of the transaction from showing that she signed as surety.—Marbury Lumber Co. v. Woolfolk, Ala., 65 So. 43.

61.—Gratuitous Services.—A husband cannot recover from his wife, in a divorce action by her, for sums paid during marriage for the maintenance of the wife's small children by her first husband, and for medical attention and funeral expenses for one of them, and for the maintenance of the wife's live stock, in the absence of a contract by the wife to pay for such services.—Allen v. Allen, Ky., 166 S. W. 211.

62.——Tenancy by Entireties.—A husband could grant a license to lay a sewer on land owned by him and his wife by the entireties, which was good as against both during their joint lives, and absolute as against the husband if he survived.—Ewen v. Hart, Mo. App., 166 S. W. 315.

63. **Infants**—Necessaries. — The employment by an infant owner of a store building of a janitor for the building did not involve a contract by the infant for "necessaries," and hence he would not be liable for the janitor's torts on that ground.—Covault v. Nevitt, Wis., 146 N. W., 1115.

64. **Insurance**—Proximate Cause.—That the age of assured would have caused a hardening of arteries, tending to bring about a rupture of the heart in case of a fall, held not to preclude recovery on his accident insurance certificate, on the ground that the fall was not the proximate cause of his death.—Moon v. Order of United Commercial Travelers of America, Neb., 146 N. W. 1037.

65.——Removal of Property.—Where a fire insurance policy stipulates that the personal property insured is located in a described building, and the property is removed to a different place without consent of the insurer and is there burned, the insured cannot recover.—Black v. Fidelity-Phenix Fire Ins. Co., Ga. App., 81 S. E. 584.

66.—Waiver.—Knowledge of the Supreme Treasurer of a fraternal benefit society of the custom in a local lodge of not forfeiting a member's rights for nonpayment of dues and assessments when due held imputable to the society so as to authorize a finding of waiver of such by-law.—Griffith v. Supreme Council of Royal Arcanum, Mo. App., 166 S. W. 324.

67. **Libel and Slander**—Malice.—Where the law presumes malice from the publication of words libelous per se, a recovery of punitive damages is authorized without requiring a showing of malice.—Reid v. Sun Pub. Co., Ky., 166 S. W. 245.

68.——Malice.—Statements by defendant derogatory to plaintiff's character, made at other times than those alleged in the complaint, are competent evidence of express malice.—Smith v. Brown, S. C., 81 S. E. 633.

69.——Privilege.—A declaration by a woman against a newspaper for libel for falsely and maliciously printing that her husband wants a divorce on the ground that she is a bigamist is not demurrable on the ground of privilege because there is a divorce case in the reports between parties of the same name.—Taylor v. Tribune Pub. Co., Fla., 65 So. 3.

70. **Limitation of Actions**—Discovery of Fraud.—In case of fraud when the means of discovery are at hand, diligence must be exercised to discover the fraud, but the statute does not run until there is some circumstance or fact to arouse suspicion.—Smalley v. Vogt, Tex. Civ. App., 166 S. W. 1.

71.——New Promise.—A written declaration that a barred debt will not be paid until other large debts have been paid, and not then unless convenient to the writer, is not such an unconditional acknowledgement or promise to pay as will revive the debt under Gen St. 1906, § 1717.—Cosio v. Guerra, Fla., 65 So. 5.

72. **Marriage**—Mistake.—Where a woman, mistakenly believing a man to be divorced, entered into a marriage without knowledge of the impediment, the continued co-habitation of the parties after removal of the impediment is sufficient to establish a good marriage.—Gorman v. Gorman, Tex. Civ. App., 166 S. W. 123.

73. **Master and Servant**—Anticipation of Injury.—A master's ignorance of the probable danger from an act or omission is not necessarily an excuse, as it is his duty to know what he could learn by exercising such diligence as the circumstances reasonably demanded.—St. Louis Southwestern Ry. Co. of Texas v. Freles, Tex. 166 S. W. 91.

74——Assumption of Risk.—Where an inexperienced minor employee, without knowledge of the danger or instructions, was injured from falling while using an unsafe means in descending from a platform, pursuant to the express directions of his foreman, on whose directions he had a right to rely, there was no assumption of risk by him.—Liptak v. Kurrie, Pa., 90 Atl. 442.

75.——Compensation Act.—The Workmen's Compensation Act, which abolished the defenses of assumption of risk and negligence of fellow servant, did not abolish the defense of contributory negligence.—Besnys v. Herman Zohrlaut Leather Co., Wis., 147 N. W. 37.

76.——Fellow Servants.—The engineer and brakeman operating a train are not fellow servants of a car cleaner, whose sole duty is to sweep out passenger coaches on the arrival of

the train at destination.—Louisville, H. & St. L. Ry. Co. v. Armes, Ky., 166 S. W. 190.

77.——Joint Agency.—Where the station agent employed by defendant to act as joint agent for itself and another railroad company negligently killed his helper while performing services for the benefit of the second railroad company, defendant is liable; the agent being the servant of both companies when performing duties for either, though paid solely by the defendant.—Moore v. Southern R. Co., N. C., 81 S. E. 603.

78.——Joint Tortfeasors.—Where an electric street railway company negligently places a trolley wire over a steam railroad track with the permission of the steam railroad company, so low as to endanger the employes of the railroad, the two companies are jointly liable as tortfeasors for injury resulting to such an employe.—Louisville & N. R. Co. v. Allen, Fla., 65 So. 8.

79.——Pleadings and Proof.—Though a servant suing for a personal injury alleged gross negligence, but proved only ordinary negligence which justified a recovery, the court properly authorized a recovery for ordinary negligence.—Louisville, H. & St. L. Ry. Co. v. Armes, Ky., 166 S. W. 190.

80.——Youthful Employee.—An employer, who permitted a dangerous compressed air appliance to lie unguarded on the floor when not in use, and did not warn a youthful employe using it of the danger of an improper use thereof, held liable for an injury inflicted by the employe on a coemploye by the improper use of the appliance.—Robinson v. Melville Mfg. Co., N. C., 81 S. E. 681.

81. **Mechanics' Lien**—Construction Forms.—Party furnishing lumber used in construction forms for the concrete walls of a building held entitled to a lien for the value of such of the lumber as by repeated use was rendered worthless, and for the depreciation in value of the balance.—Moritz v. Lewis Const. Co., Wis., 146 N. W. 1120.

82. **Mortgages—Purchase.**—The purchase of a negotiable mortgage note before maturity and its transfer before maturity would carry with it the same protection to the mortgage, its accessory, as the note itself was entitled to.—Talbert v. Talbert, S. C., 81 S. E. 644.

83. **Negligence**—Defined.—To constitute actionable negligence, the act done or omitted must be one which a person of ordinary prudence would not have done or omitted and from which it ought reasonably to have been anticipated that injury would result.—St. Louis Southwestern Ry. Co of Texas v. Freles, Tex. 166 S. W. 91.

84.——Jury Question.—When the question is one of negligence vel-non, the case should not be submitted to the jury, if the evidence is equally consistent with the existence or nonexistence of negligence.—Louisville & N. R. Co. v. Taylor's Adm'x, Ky., 166 S. W. 199.

85. **Nuisance**—Defined.—The doing of a lawful act in a careful manner is not a nuisance, but the doing of a lawful thing in a negligent manner may be a nuisance.—Louisville & N. R. Co. v. Commonwealth, Ky., 166 S. W. 237.

86. **Partnership** — Corporation.—An agreement between the organizers of a corporation limiting their right to sell their stocks and bonds to a sale to the other members, and providing that, if the other members did not wish to purchase, the corporation should be dissolved and liquidated, did not destroy its character as a corporation or make it a partnership.—In re Fechheimer Fishel Co., U. S. C. C. A., 212 Fed. 357.

87. **Principal and Agent**—Estoppel.—Where plaintiff has reasonably and in good faith been led to believe in the existence of an apparent authority which a principal permits his agent to have, and because of such belief has in good faith dealt with the agent, the principal is estopped to deny the agency to the prejudice of plaintiff.—Sinclair v. Investors' Syndicate, Minn., 146 N. W. 1109.

88. **Principal and Surety**—Guarantor.—A surety insures the debt, and is bound with his principal as an original promisor; while a guarantor answers for the debtor's solvency, and is bound only in case the principal does not pay or perform.—J. R. Watkins Medical Co. v. Lovelady, Ala., 65 So. 52.

89. **Principal and Agent**—Misrepresentation.—A seller of horses was not absolved from liability for fraudulent representations made by him, though he was acting as agent for another party.—Underwood v. Jordan, Tex. Civ. App., 166 S. W. 88.

90. **Quieting Title**—Multiplicity of Suits.—Where one sold pianos to various persons, taking lien notes and sold them to plaintiffs, and sold duplicates thereof to others, who are asserting rights thereunder, a suit to quiet title is justified on the ground of preventing a multiplicity of suits.—Franke v. H. P. Nelson Co., Wis., 147 N. W. 13.

91. **Railroads**—Estoppel.—Where a coal mining corporation accepts a car for use, knowing it to be inadequately equipped with brakes, and negligently permits it to escape, thereby injuring the property of a third person, the carrier is not liable therefor, though the injury might not have occurred had the car been adequately equipped.—Anderson v. Baltimore & O. R. Co. W. Va., 81 S. E. 579.

92. **Reformation of Instruments**—Burden of Proof.—A petition for reformation of an instrument must show in clear and concise language the grounds of reformation, the agreement actually made, and the agreement which the parties intended to make.—Lindenberger v. Rowland, Ky., 166 S. W. 242.

93.——Omission.—A deed cannot be reformed by the addition of a stipulation therein, unless the stipulation was omitted by fraud, accident or mistake.—Luckenbach v. Thomas, Tex. Civ. App., 166 S. W. 99.

94. **Removal of Causes**—Waiver.—A stipulation for an extension of time to answer, approved by the trial judge, is a general appearance and waives the party's right to remove the cause, though providing that the stipulation be made an order of court.—Pruitt v. Charlotte Power Co., N. C., 81 S. E. 624.

95. **Sales**—Retention of Title.—While a person who has sold chattels under a conditional contract of sale, retaining title until payment of the price, may on a default foreclose his lien, or retake the property, or sue for the unpaid price, the election of one remedy is an abandonment of the others.—A. F. Chase & Co. v. Kelly, Minn., 146 N. W. 1113.

96. **Seduction**—Corroboration.—In a prosecution for seduction under promise of marriage, it is not necessary that the seduced woman be corroborated in each and every particular of the elements necessary to constitute the offense.—Gillespie v. State, Tex. Cr. App., 166 S. W. 135.

97. **Specific Performance**—Notice.—Where the vendor, after executing a contract for the sale of land, conveys the land to another with notice of such contract, his grantee may be held liable for specific performance of the contract.—Dillinger v. Ogden, Pa., 90 Atl. 446.

98. **Subrogation**—Volunteer.—A payment by a mere volunteer or intermeddler who has no interest to protect, or any legal or moral obligation to pay the debt of another, does not entitle him to subrogation without an agreement to that effect.—Journal Pub. Co. v. Barber, N. C., 81 S. E. 694.

99. **Trusts**—Creation of.—An indorsement of a certificate of deposit, directing payment to certain persons in case of death of the indorser, cannot be sustained as a declaration of a trust in favor of the donees; no present interest or estate being vested in them, as is necessary to creation of a trust.—O'Gorman v. Jolley, S. D., 147 N. W. 78.

100. **Wills**—Testamentary.—A deed duly acknowledged, delivered, and recorded, which recites that the grantor, in consideration of a nominal sum paid in cash, and of love and affection, grants and conveys to the grantee specified real estate, "this deed not to take until after my death," conveys the title subject to a life estate, and is not testamentary.—Phillips v. Phillips, Ala., 65 So. 49.